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THE HARVARD LAW REVIEW, with the appearance of this number, completes the first ten years of its existence. An Index of all the articles that have been published in the ten volumes has been prepared, and is printed with this number as a supplement to the regular Index of Volume X.

DOUBLE COMPENSATION. — In the Canada Law Journal, Vol. XXXIII. p. 151, attention is called to a novel case lately argued before the Supreme Court of Nova Scotia. A, the plaintiff, the owner of a tug, made a contract with B, the defendant, for a boiler for the tug, to be delivered at a certain time, it being understood by both that the tug would be useless without the boiler. Under similar circumstances, A made a similar contract with C for an engine. Both B and C broke their contracts; A now sues B, and seeks to recover compensation for loss of use of the tug. B claims that, had his contract been performed, A would have had a tug without an engine, and would therefore still have lost the use of the tug; and hence cannot recover from B damages for loss of use.

This ingenious contention is evidently unsound. The loss of use having been within the contemplation of the parties, the value of it may be recovered provided it resulted proximately from the breach of contract. In this case B's breach and C's took effect concurrently in causing the loss of use, and both are therefore legally responsible. It is evidently no sufficient answer to say that either cause alone might have caused the loss, since both in fact caused it.

Suppose A recovered from B full damages, could he simultaneously or subsequently recover the same amount from C, thus getting double compensation? At law, it seems so. B and C were not joint wrongdoers, but liable each to make compensation for the non-fulfilment of his proper contract duty. The value of the two contracts was the same, the compensation due upon breach the same; and it was necessarily the full

amount required for compensation, — since it would not seem possible in this case to divide the consequential loss. The plaintiff, having the legal right to recover the value of the contract, gets it, though it may do more than make him individually whole; as where a party sues on a contract made wholly or partly for the benefit of a third person. There seems to be no case just like the one under discussion. A somewhat analogous case is that where damages for a tort are not reduced by the previous payment to the plaintiff on a policy of insurance. *Perrott* v. *Shearer*, 17 Mich. 48; 1 Sedg. Dam., 8th ed., § 67. See also *Elmer* v. *Fessenden*, 154 Mass. 427.

So the question stands at strict law. Whether equity might modify the rights of the parties, and how far such modification might be made available as an equitable defence by either B or C in the action at law, are matters upon which the actual decisions throw no light. See *Gooding* v. *Shea*, 103 Mass. 360; *Jackson* v. *Turrell*, 39 N. J. L. 329.

"PUBLIC DEFENDERS." — Mrs. Clara Foltz of the New York Bar is firmly convinced that there is at least one serious defect in our judicial system. While the criminal court is admirably equipped with machinery for the prosecution of offences, it is lamentably deficient, she believes, in the machinery for defence. The unfortunate prisoner who is unable to pay for counsel must expect to be prosecuted by the ablest of attorneys, backed up by all the resources of the State, and only too frequently to be defended, if at all, by a court appointee who is wholly inferior to the men with whom he must cope. The remedy for this, Mrs. Foltz finds in the creation of a new officer, to be called the Public Defender. She has formulated her ideas in a bill which is to be laid before the legislature of New York. It provides for the election to the office of an attorney at law in each county, whose duty it shall be "to attend all criminal courts, and to appear for and defend all persons charged with violation of the law who are without counsel and who desire an attorney to appear for them."

While an impecunious prisoner whose case is tried in one of the smaller towns, where it will become matter of common talk among lawyers, is not likely to suffer for want of competent counsel to defend him, it is apt to be different amid the hurry and bustle of litigation in the large cities, where such things pass by unnoticed. Even there it may perhaps be doubted if substantial injustice is often done a prisoner under the present system. If he is not adequately represented by counsel, the average judge is likely to guard his interests well enough, if not to err on the side of leniency. It is an unpleasant position for the judge, however, and of course involves a departure from the strictly judicial function. Mrs. Foltz's idea certainly merits consideration.

THE SUPREME COURT AND THE PRESUMPTION OF INNOCENCE. — In *Coffin* v. *United States*, 156 U. S. 432, it will be remembered that the Supreme Court held it was error for the judge, in a criminal case, to refuse to charge as to the presumption of innocence, notwithstanding that the jury were explicitly told that they must be satisfied of the prisoner's guilt beyond a reasonable doubt. As a purely theoretical question, the decision seems wrong. It may perhaps be supported, however, as was pointed out in 9 HARVARD LAW REVIEW, 144, on the practical ground